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**WRITERS EXT:
1004**

May 23, 2024
CA3256

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Medical Management International, Inc.
Certified Mail #9589071052702092226686
1505 Corporation
National Registered Agents, Inc.
AMANDA GARCIA
330 N BRAND BLVD, Suite 700
GLENDALE, CA 91203

Amended Notice For LWDA, Case No. 1020460-24

Re: Amended Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and Violation of Applicable Industrial Welfare Commission Wage Order(s), brought Pursuant To California Labor Code Section 2699.5.

Dear Counsel:

Our office originally sent a PAGA Notice on April 4, 2024 which gave notice to the LWDA and Defendant to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.*

This Amended Notice is intended to clarify the address of the Registered Agent for Defendant.

“Aggrieved Employees” refers to all individuals who are or previously were employed by Medical Management International, Inc. in California, including any employees staffed with Medical Management International, Inc. by a third party, and classified as non-exempt employees during the time period of April 4, 2023 until a date as determined by the Court. Our offices represent Plaintiff Amber Wolfing (“Plaintiff”) and other Aggrieved Employees in a lawsuit against Medical Management International, Inc. (“Defendant”). Plaintiff has been employed by Defendant in California since August 2019. Plaintiff is at all times classified by

Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages and sick pay wages at the correct rate, for all of their missed meal and rest breaks at the correct regular rates, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provided to PLAINTIFF and the AGGRIEVED EMPLOYEES failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency’s reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The lawsuit consists

of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all Aggrieved Employees.

Your earliest response to this notice is appreciated. If you have any questions of concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

04/18/2024

By: K. Lideros Deputy**BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA**IN AND FOR THE COUNTY OF SACRAMENTO**

AMBER WOLFING, an individual, on behalf
of herself and on behalf of all persons similarly
situated,

Plaintiff,

vs.

MEDICAL MANAGEMENT
INTERNATIONAL, INC., a Corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 24CV007705**CLASS ACTION COMPLAINT FOR:**

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE § 510;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PAY SICK PAY WAGES IN VIOLATION OF CAL. LAB. CODE §§ 201-203, 233, 246; and,
9. FAILURE TO PROVIDE REASONABLE ACCOMMODATION IN VIOLATION OF CAL. GOV. CODE § 12940(m).

DEMAND FOR A JURY TRIAL

1 Amber Wolfing (“PLAINTIFF”), an individual, on behalf of herself and all other
2 similarly situated current and former employees alleges on information and belief, except for
3 her own acts and knowledge which are based on personal knowledge, the following.

4
5 **THE PARTIES**

6 1. Medical Management International, Inc.(“DEFENDANT”) is a Corporation that
7 at all relevant times mentioned herein conducted and continues to conduct substantial business
8 in California.

9 2. DEFENDANT provides animal healthcare services in California.

10 3. PLAINTIFF has been employed by DEFENDANT in California since August of
11 2019 as a non-exempt employee, paid on an hourly basis, and entitled to the legally required
12 meal and rest periods and payment of minimum and overtime wages due for all time worked.

13 4. PLAINTIFF brings this Class Action on behalf of herself and a California class,
14 defined as all individuals who are or previously were employed by DEFENDANT in California,
15 including any employees staffed with DEFENDANT by a third party, and classified as non-
16 exempt employees (the “CALIFORNIA CLASS”) at any time during the period beginning four
17 (4) years prior to the filing of this Complaint and ending on the date as determined by the Court
18 (the “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate claim
19 of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

20 5. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
21 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred
22 during the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s policy and practice
23 which failed to lawfully compensate these employees. DEFENDANT’s policy and practice
24 alleged herein was an unlawful, unfair and deceptive business practice whereby
25 DEFENDANT retained and continues to retain wages due PLAINTIFF and the other
26 members of the CALIFORNIA CLASS. PLAINTIFF and the other members of the
27 CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the
28 future, relief for the named PLAINTIFF and the other members of the CALIFORNIA

1 CLASS who have been economically injured by DEFENDANT's past and current unlawful
2 conduct, and all other appropriate legal and equitable relief.

3 6. The true names and capacities, whether individual, corporate, subsidiary,
4 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are
5 presently unknown to PLAINTIFF who therefore sues these Defendants by such fictitious
6 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this
7 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when
8 they are ascertained. PLAINTIFF is informed and believes, and based upon that information
9 and belief alleges, that the Defendants named in this Complaint, including DOES 1 through
10 50, inclusive, are responsible in some manner for one or more of the events and happenings
11 that proximately caused the injuries and damages hereinafter alleged.

12 7. The agents, servants and/or employees of the Defendants and each of them
13 acting on behalf of the Defendants acted within the course and scope of his, her or its
14 authority as the agent, servant and/or employee of the Defendants, and personally
15 participated in the conduct alleged herein on behalf of the Defendants with respect to the
16 conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to
17 the other Defendants and all Defendants are jointly and severally liable to PLAINTIFF and
18 the other members of the CALIFORNIA CLASS, for the loss sustained as a proximate result
19 of the conduct of the Defendants' agents, servants and/or employees.

20 21 **THE CONDUCT**

22 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
23 was required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time
24 worked, meaning the time during which an employee is subject to the control of an
25 employer, including all the time the employee is suffered or permitted to work.
26 DEFENDANT requires PLAINTIFF and CALIFORNIA CLASS Members to work without
27 paying them for all the time they are under DEFENDANT's control. Among other things,
28 DEFENDANT requires PLAINTIFF to work while clocked out during what is supposed to

1 be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by
2 work assignments while clocked out for what should have been PLAINTIFF's off-duty meal
3 break. DEFENDANT, as a matter of established company policy and procedure, administers
4 a uniform practice of rounding the actual time worked and recorded by PLAINTIFF and
5 CALIFORNIA CLASS Members, always to the benefit of DEFENDANT, so that during the
6 course of their employment, PLAINTIFF and CALIFORNIA CLASS Members are paid less
7 than they would have been paid had they been paid for actual recorded time rather than
8 "rounded" time. Additionally, DEFENDANT engages in the practice of requiring
9 PLAINTIFF and CALIFORNIA CLASS Members to perform work off the clock in that
10 DEFENDANT, as a condition of employment, required these employees to submit to
11 mandatory temperature checks and symptom questionnaires for COVID-19 screening prior
12 to clocking into DEFENDANT's timekeeping system for the workday. As a result,
13 PLAINTIFF and other CALIFORNIA CLASS Members forfeit minimum wage, overtime
14 wage compensation, and off-duty meal breaks by working without their time being correctly
15 recorded and without compensation at the applicable rates. DEFENDANT's policy and
16 practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time
17 worked, is evidenced by DEFENDANT's business records.

18 9. State and federal law provides that employees must be paid overtime and meal
19 and rest break premiums at one-and-one-half times their "regular rate of pay." PLAINTIFF
20 and other CALIFORNIA CLASS Members are compensated at an hourly rate plus incentive
21 pay that is tied to specific elements of an employee's performance.

22 10. The second component of PLAINTIFF's and other CALIFORNIA CLASS
23 Members' compensation is DEFENDANT's non-discretionary incentive program that paid
24 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
25 performance for DEFENDANT. The non-discretionary incentive program provided all
26 employees paid on an hourly basis with incentive compensation when the employees met the
27 various performance goals set by DEFENDANT. However, when calculating the regular
28 rate of pay in order to pay overtime and meal and rest break premiums to PLAINTIFF and

1 other CALIFORNIA CLASS Members, DEFENDANT failed to include the incentive
2 compensation as part of the employees' "regular rate of pay" for purposes of calculating
3 overtime pay and meal and rest break premium pay. Management and supervisors described
4 the incentive program to potential and new employees as part of the compensation package.
5 As a matter of law, the incentive compensation received by PLAINTIFF and other
6 CALIFORNIA CLASS Members must be included in the "regular rate of pay." The failure
7 to do so has resulted in a underpayment of overtime compensation and meal and rest break
8 premiums to PLAINTIFF and other CALIFORNIA CLASS Members by DEFENDANT.

9 11. As a result of their rigorous work schedules, PLAINTIFF and other
10 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute
11 off duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF
12 and other CALIFORNIA CLASS Members were required from time to time to perform
13 work as ordered by DEFENDANT for more than five (5) hours during some shifts without
14 receiving a meal break. Further, DEFENDANT from time to time failed to provide
15 PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period for
16 some workdays in which these employees were required by DEFENDANT to work ten (10)
17 hours of work. DEFENDANT also engaged in the practice of rounding the meal period
18 times to avoid paying penalties to PLAINTIFF and other CALIFORNIA CLASS Members.
19 PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeit meal breaks
20 without additional compensation and in accordance with DEFENDANT's corporate policy
21 and practice.

22 12. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
23 CALIFORNIA CLASS Members were also required from time to time to work in excess of
24 four (4) hours without being provided ten (10) minute rest periods. Further, these employees
25 were denied their first rest periods of at least ten (10) minutes for some shifts worked of at
26 least two (2) to four (4) hours from time to time, a first and second rest period of at least ten
27 (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to
28 time, and a first, second and third rest period of at least ten (10) minutes for some shifts

1 worked of ten (10) hours or more from time to time. PLAINTIFF and other CALIFORNIA
2 CLASS Members were also not provided with one hour wages in lieu thereof. Additionally,
3 the applicable California Wage Order requires employers to provide employees with off-
4 duty rest periods, which the California Supreme Court defined as time during which an
5 employee is relieved from all work related duties and free from employer control. In so
6 doing, the Court held that the requirement under California law that employers authorize and
7 permit all employees to take rest period means that employers must relieve employees of all
8 duties and relinquish control over how employees spend their time which includes control
9 over the locations where employees may take their rest period. Employers cannot impose
10 controls that prohibit an employee from taking a brief walk - five minutes out, five minutes
11 back. Here, DEFENDANT's policy restricted PLAINTIFF and other CALIFORNIA
12 CLASS Members from unconstrained walks and is unlawful based on DEFENDANT's rule
13 which states PLAINTIFF and other CALIFORNIA CLASS Members cannot leave the work
14 premises during their rest period.

15 13. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to
16 accurately record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the
17 actual amount of time these employees worked. Pursuant to the Industrial Welfare
18 Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and other
19 CALIFORNIA CLASS Members for all time worked, meaning the time during which an
20 employee was subject to the control of an employer, including all the time the employee was
21 permitted or suffered to permit this work. DEFENDANT required these employees to work
22 off the clock without paying them for all the time they were under DEFENDANT's control.
23 As such, DEFENDANT knew or should have known that PLAINTIFF and the other
24 members of the CALIFORNIA CLASS were under compensated for all time worked. As a
25 result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited time worked by
26 working without their time being accurately recorded and without compensation at the
27 applicable minimum wage and overtime wage rates. To the extent that the time worked off
28 the clock does not qualify for overtime premium payment, DEFENDANT fails to pay

1 minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,
2 1197, and 1197.1.

3 14. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
4 other members of the CALIFORNIA CLASS with complete and accurate wage statements
5 which failed to show, among other things, the correct gross and net wages earned. Cal. Lab.
6 Code § 226 provides that every employer shall furnish each of his or her employees with an
7 accurate itemized wage statement in writing showing, among other things, gross wages
8 earned and all applicable hourly rates in effect during the pay period and the corresponding
9 amount of time worked at each hourly rate. PLAINTIFF and CALIFORNIA CLASS
10 Members were paid on an hourly basis. As such, the wage statements should reflect all
11 applicable hourly rates during the pay period and the total hours worked, and the applicable
12 pay period in which the wages were earned pursuant to California Labor Code Section
13 226(a). The wage statements DEFENDANT provided to PLAINTIFF and other
14 CALIFORNIA CLASS Members failed to identify such information. More specifically, the
15 wage statements failed to identify the accurate total hours worked each pay period. When
16 the hours shown on the wage statements were added up, they did not equal the actual total
17 hours worked during the pay period in violation of Cal. Lab. Code 226(a)(2). Aside, from
18 the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF
19 an itemized wage statement that lists all the requirements under California Labor Code 226
20 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFF and the other
21 members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code
22 § 226.

23 15. DEFENDANT underpaid sick pay wages to PLAINTIFF and other
24 CALIFORNIA CLASS Members by failing to pay such wages at the regular rate of pay in
25 violation of Cal. Lab. Code Section 246. Specifically, PLAINTIFF and other non-exempt
26 employees earn non-discretionary remuneration. Rather than pay sick pay at the regular rate
27 of pay, DEFENDANT underpaid sick pay to PLAINTIFF and other CALIFORNIA CLASS
28 Members at their base rates of pay.

1 16. Cal. Lab. Code Section 246(l)(2) requires that paid sick time for nonexempt
2 employees be calculated by dividing the employee's total wages, not including overtime
3 premium pay, by the employee's total hours worked in the full pay periods of the prior 90
4 days of employment.

5 17. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay
6 at the regular rate of pay. PLAINTIFF and CALIFORNIA CLASS Members routinely
7 earned non-discretionary incentive wages which increased their regular rate of pay.
8 However, when sick pay was paid, it was paid at the base rate of pay for PLAINTIFF and
9 members of the CALIFORNIA CLASS, as opposed to the correct, higher regular rate of pay,
10 as required under Cal. Lab. Code Section 246.

11 18. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF
12 and other members of the CALIFORNIA CLASS their correct wages and accordingly owe
13 waiting time penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is
14 informed and believes and based thereon alleges that such failure to pay sick pay at regular
15 rate was willful, such that PLAINTIFF and members of the CALIFORNIA CLASS whose
16 employment has separated are entitled to waiting time penalties pursuant to Cal. Lab. Code
17 Sections 201-203.

18 19. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
19 to collect or receive from an employee any part of wages theretofore paid by said employer
20 to said employee." DEFENDANT failed to pay all compensation due to PLAINTIFF and
21 other CALIFORNIA LABOR SUB-CLASS Members, made unlawful deductions from
22 compensation payable to PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members,
23 failed to disclose all aspects of the deductions from compensation payable to PLAINTIFF
24 and CALIFORNIA LABOR SUB-CLASS Members, and thereby failed to pay these
25 employees all wages due at each applicable pay period and upon termination. PLAINTIFF
26 and members of the CALIFORNIA LABOR SUB-CLASS seek recovery of all illegal
27 deductions from wages according to proof, related penalties, interest, attorney fees and costs.
28

1 20. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
2 PLAINTIFF and the other CALIFORNIA CLASS Members for required business expenses
3 incurred by the PLAINTIFF and other CALIFORNIA CLASS Members in direct
4 consequence of discharging their duties on behalf of DEFENDANT. Under California
5 Labor Code Section 2802, employers are required to indemnify employees for all expenses
6 incurred in the course and scope of their employment. Cal. Lab. Code § 2802 expressly
7 states that "an employer shall indemnify his or her employee for all necessary expenditures
8 or losses incurred by the employee in direct consequence of the discharge of his or her
9 duties, or of his or her obedience to the directions of the employer, even though unlawful,
10 unless the employee, at the time of obeying the directions, believed them to be unlawful."

11 21. In the course of their employment PLAINTIFF and other CALIFORNIA
12 CLASS Members as a business expense, were required by DEFENDANT to use their own
13 personal cellular phones as a result of and in furtherance of their job duties as employees for
14 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost
15 associated with the use of their personal cellular phones for DEFENDANT's benefit.
16 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by
17 DEFENDANT to use their personal cellular phones. As a result, in the course of their
18 employment with DEFENDANT, PLAINTIFF and other members of the CALIFORNIA
19 CLASS incurred unreimbursed business expenses which included, but were not limited to,
20 costs related to the use of their personal cellular phones all on behalf of and for the benefit
21 of DEFENDANT.

22 22. In violation of the applicable sections of the California Labor Code and the
23 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,
24 DEFENDANT as a matter of company policy, practice and procedure, intentionally,
25 knowingly and systematically failed to provide PLAINTIFF and the other Aggrieved
26 Employees suitable seating when the nature of these employees' work reasonably permitted
27 sitting.
28

23. DEFENDANT knew or should have known that PLAINTIFF and other Aggrieved Employees were entitled to suitable seating and/or were entitled to sit when it did not interfere with the performance of their duties, and that DEFENDANT did not provide suitable seating and/or did not allow them to sit when it did not interfere with the performance of their duties.

24. By reason of this conduct applicable to PLAINTIFF and all Aggrieved Employees, DEFENDANT violated California Labor Code Section 1198 and California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Wage Order 4-2001, Section 14 by failing to provide suitable seats. PLAINTIFF seeks penalties on behalf of PLAINTIFF and other Aggrieved Employees as provided herein. Providing suitable seating is the DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the obligation to meet this burden, DEFENDANT violated the California Labor Code and regulations promulgated thereunder as herein alleged.

25. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally required off-duty meal and rest breaks to PLAINTIFF as required by the applicable Wage Order and Labor Code and failed to pay PLAINTIFF all minimum and overtime wages due to PLAINTIFF. DEFENDANT did not have a policy or practice which provided timely off-duty meal and rest breaks to PLAINTIFF and also failed to compensate PLAINTIFF for PLAINTIFF's missed meal and rest breaks. The nature of the work performed by the PLAINTIFF did not prevent PLAINTIFF from being relieved of all of PLAINTIFF's duties for the legally required off-duty meal periods. As a result, DEFENDANT's failure to provide PLAINTIFF with the legally required meal periods is evidenced by DEFENDANT's business records. The amount in controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

JURISDICTION AND VENUE

26. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure, Section 410.10 and California Business & Professions Code, Section

1 17203. This action is brought as a Class Action on behalf of PLAINTIFF and similarly
2 situated employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

3 27. Venue is proper in this Court pursuant to California Code of Civil Procedure,
4 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
5 DEFENDANT (i) currently maintains and at all relevant times maintained offices and
6 facilities in this County and/or conducts substantial business in this County, and (ii)
7 committed the wrongful conduct herein alleged in this County against members of the
8 CALIFORNIA CLASS.

9
10 **THE CALIFORNIA CLASS**

11 28. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and
12 Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
13 "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a
14 California class, defined as all individuals who are or previously were employed by
15 DEFENDANT in California, including any employees staffed with DEFENDANT by a third
16 party, and classified as non-exempt employees(the "CALIFORNIA CLASS") at any time
17 during the period beginning four (4) years prior to the filing of this Complaint and ending on
18 the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount
19 in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five
20 million dollars (\$5,000,000.00).

21 29. To the extent equitable tolling operates to toll claims by the CALIFORNIA
22 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
23 accordingly.

24 30. DEFENDANT, as a matter of company policy, practice and procedure, and in
25 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage
26 Order requirements, and the applicable provisions of California law, intentionally,
27 knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed to record all
28 meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members,

1 even though DEFENDANT enjoyed the benefit of this work, required employees to perform
2 this work and permits or suffers to permit this work.

3 31. DEFENDANT has the legal burden to establish that each and every
4 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
5 required by California laws. The DEFENDANT, however, as a matter of policy and
6 procedure failed to have in place during the CALIFORNIA CLASS PERIOD and still fails
7 to have in place a policy or practice to ensure that each and every CALIFORNIA CLASS
8 Member is paid as required by law. This common business practice is applicable to each
9 and every CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as
10 unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.*
11 (the "UCL") as causation, damages, and reliance are not elements of this claim.

12 32. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
13 CLASS Members is impracticable.

14 33. DEFENDANT violated the rights of the CALIFORNIA CLASS under
15 California law by:

- 16 (a) Committing an act of unfair competition in violation of , Cal. Bus. &
17 Prof. Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly
18 and/or deceptively having in place company policies, practices and
19 procedures that failed to record and pay PLAINTIFF and the other
20 members of the CALIFORNIA CLASS for all time worked, including
21 minimum wages owed and overtime wages owed for work performed
22 by these employees; and,
- 23 (b) Committing an act of unfair competition in violation of the UCL, by
24 failing to provide the PLAINTIFF and the other members of the
25 CALIFORNIA CLASS with the legally required meal and rest periods.

26 34. This Class Action meets the statutory prerequisites for the maintenance of a
27 Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:
28

- 1 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
2 that the joinder of all such persons is impracticable and the disposition
3 of their claims as a class will benefit the parties and the Court;
- 4 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
5 issues that are raised in this Complaint are common to the
6 CALIFORNIA CLASS will apply to every member of the
7 CALIFORNIA CLASS;
- 8 (c) The claims of the representative PLAINTIFF are typical of the claims
9 of each member of the CALIFORNIA CLASS. PLAINTIFF, like all
10 the other members of the CALIFORNIA CLASS, was classified as a
11 non-exempt employee paid on an hourly basis who was subjected to the
12 DEFENDANT's deceptive practice and policy which failed to provide
13 the legally required meal and rest periods to the CALIFORNIA CLASS
14 and thereby underpaid compensation to PLAINTIFF and
15 CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a
16 result of DEFENDANT's employment practices. PLAINTIFF and the
17 members of the CALIFORNIA CLASS were and are similarly or
18 identically harmed by the same unlawful, deceptive and unfair
19 misconduct engaged in by DEFENDANT; and,
- 20 (d) The representative PLAINTIFF will fairly and adequately represent and
21 protect the interest of the CALIFORNIA CLASS, and has retained
22 counsel who are competent and experienced in Class Action litigation.
23 There are no material conflicts between the claims of the representative
24 PLAINTIFF and the members of the CALIFORNIA CLASS that would
25 make class certification inappropriate. Counsel for the CALIFORNIA
26 CLASS will vigorously assert the claims of all CALIFORNIA CLASS
27 Members.
28

1 35. In addition to meeting the statutory prerequisites to a Class Action, this action
2 is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

3 (a) Without class certification and determination of declaratory, injunctive,
4 statutory and other legal questions within the class format, prosecution
5 of separate actions by individual members of the CALIFORNIA
6 CLASS will create the risk of:

7 1) Inconsistent or varying adjudications with respect to individual
8 members of the CALIFORNIA CLASS which would establish
9 incompatible standards of conduct for the parties opposing the
10 CALIFORNIA CLASS; and/or,

11 2) Adjudication with respect to individual members of the
12 CALIFORNIA CLASS which would as a practical matter be
13 dispositive of interests of the other members not party to the
14 adjudication or substantially impair or impede their ability to
15 protect their interests.

16 (b) The parties opposing the CALIFORNIA CLASS have acted or refused
17 to act on grounds generally applicable to the CALIFORNIA CLASS,
18 making appropriate class-wide relief with respect to the CALIFORNIA
19 CLASS as a whole in that DEFENDANT failed to pay all wages due to
20 members of the CALIFORNIA CLASS as required by law;

21 1) With respect to the First Cause of Action, the final relief on
22 behalf of the CALIFORNIA CLASS sought does not relate
23 exclusively to restitution because through this claim
24 PLAINTIFF seeks declaratory relief holding that the
25 DEFENDANT's policy and practices constitute unfair
26 competition, along with declaratory relief, injunctive relief, and
27 incidental equitable relief as may be necessary to prevent and
28 remedy the conduct declared to constitute unfair competition;

1 (c) Common questions of law and fact exist as to the members of the
2 CALIFORNIA CLASS, with respect to the practices and violations of
3 California law as listed above, and predominate over any question
4 affecting only individual CALIFORNIA CLASS Members, and a Class
5 Action is superior to other available methods for the fair and efficient
6 adjudication of the controversy, including consideration of:

- 7 1) The interests of the members of the CALIFORNIA CLASS in
8 individually controlling the prosecution or defense of separate
9 actions in that the substantial expense of individual actions will
10 be avoided to recover the relatively small amount of economic
11 losses sustained by the individual CALIFORNIA CLASS
12 Members when compared to the substantial expense and burden
13 of individual prosecution of this litigation;
- 14 2) Class certification will obviate the need for unduly duplicative
15 litigation that would create the risk of:
- 16 A. Inconsistent or varying adjudications with respect to
17 individual members of the CALIFORNIA CLASS, which
18 would establish incompatible standards of conduct for the
19 DEFENDANT; and/or,
- 20 B. Adjudications with respect to individual members of the
21 CALIFORNIA CLASS would as a practical matter be
22 dispositive of the interests of the other members not
23 parties to the adjudication or substantially impair or
24 impede their ability to protect their interests;
- 25 3) In the context of wage litigation because a substantial number of
26 individual CALIFORNIA CLASS Members will avoid asserting
27 their legal rights out of fear of retaliation by DEFENDANT,
28 which may adversely affect an individual's job with

1 DEFENDANT or with a subsequent employer, the Class Action
2 is the only means to assert their claims through a representative;
3 and,

- 4 4) A class action is superior to other available methods for the fair
5 and efficient adjudication of this litigation because class
6 treatment will obviate the need for unduly and unnecessary
7 duplicative litigation that is likely to result in the absence of
8 certification of this action pursuant to Cal. Code of Civ. Proc. §
9 382.

10 36. This Court should permit this action to be maintained as a Class Action
11 pursuant to Cal. Code of Civ. Proc. § 382 because:

- 12 (a) The questions of law and fact common to the CALIFORNIA CLASS
13 predominate over any question affecting only individual CALIFORNIA
14 CLASS Members because the DEFENDANT's employment practices
15 are applied with respect to the CALIFORNIA CLASS;
- 16 (b) A Class Action is superior to any other available method for the fair
17 and efficient adjudication of the claims of the members of the
18 CALIFORNIA CLASS because in the context of employment litigation
19 a substantial number of individual CALIFORNIA CLASS Members
20 will avoid asserting their rights individually out of fear of retaliation or
21 adverse impact on their employment;
- 22 (c) The members of the CALIFORNIA CLASS are so numerous that it is
23 impractical to bring all members of the CALIFORNIA CLASS before
24 the Court;
- 25 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not
26 be able to obtain effective and economic legal redress unless the action
27 is maintained as a Class Action;
28

- 1 (e) There is a community of interest in obtaining appropriate legal and
2 equitable relief for the acts of unfair competition, statutory violations
3 and other improprieties, and in obtaining adequate compensation for
4 the damages and injuries which DEFENDANT's actions have inflicted
5 upon the CALIFORNIA CLASS;
- 6 (f) There is a community of interest in ensuring that the combined assets of
7 DEFENDANT are sufficient to adequately compensate the members of
8 the CALIFORNIA CLASS for the injuries sustained;
- 9 (g) DEFENDANT has acted or refused to act on grounds generally
10 applicable to the CALIFORNIA CLASS, thereby making final class-
11 wide relief appropriate with respect to the CALIFORNIA CLASS as a
12 whole;
- 13 (h) The members of the CALIFORNIA CLASS are readily ascertainable
14 from the business records of DEFENDANT; and,
- 15 (i) Class treatment provides manageable judicial treatment calculated to
16 bring a efficient and rapid conclusion to all litigation of all wage and
17 hour related claims arising out of the conduct of DEFENDANT as to
18 the members of the CALIFORNIA CLASS.

19 37. DEFENDANT maintains records from which the Court can ascertain and
20 identify by job title each of DEFENDANT's employees who have been intentionally
21 subjected to DEFENDANT's company policy, practices and procedures as herein alleged.
22 PLAINTIFF will seek leave to amend the Complaint to include any additional job titles of
23 similarly situated employees when they have been identified.

24
25 **THE CALIFORNIA LABOR SUB-CLASS**

26 38. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh
27 and Eighth causes Action on behalf of a California sub-class, defined as all members of the
28 CALIFORNIA CLASS who are or previously were employed by DEFENDANT in

1 California, including any employees staffed with DEFENDANT by a third party, and
2 classified as non-exempt employees (the “CALIFORNIA LABOR SUB-CLASS”) at any
3 time during the period three (3) years prior to the filing of the complaint and ending on the
4 date as determined by the Court (the “CALIFORNIA LABOR SUB-CLASS PERIOD”)
5 pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate
6 claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars
7 (\$5,000,000.00).

8 39. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
9 Commission (“IWC”) Wage Order requirements, and the applicable provisions of California
10 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT
11 failed to correctly calculate compensation for the time worked by PLAINTIFF and the other
12 members of the CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to
13 these employees, even though DEFENDANT enjoyed the benefit of this work, required
14 employees to perform this work and permitted or suffered to permit this work.
15 DEFENDANT has denied these CALIFORNIA LABOR SUB-CLASS Members wages to
16 which these employees are entitled in order to unfairly cheat the competition and unlawfully
17 profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR
18 SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD
19 should be adjusted accordingly.

20 40. DEFENDANT maintains records from which the Court can ascertain and
21 identify by name and job title, each of DEFENDANT’s employees who have been
22 intentionally subjected to DEFENDANT’s company policy, practices and procedures as
23 herein alleged. PLAINTIFF will seek leave to amend the complaint to include any
24 additional job titles of similarly situated employees when they have been identified.

25 41. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
26 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

27 42. Common questions of law and fact exist as to members of the CALIFORNIA
28 LABOR SUB-CLASS, including, but not limited, to the following:

- 1 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
2 compensation due to members of the CALIFORNIA LABOR SUB-
3 CLASS for missed meal and rest breaks in violation of the California
4 Labor Code and California regulations and the applicable California
5 Wage Order;
- 6 (b) Whether DEFENDANT failed to provide the PLAINTIFF and the other
7 members of the CALIFORNIA LABOR SUB-CLASS with accurate
8 itemized wage statements;
- 9 (c) Whether DEFENDANT has engaged in unfair competition by the
10 above-listed conduct;
- 11 (d) The proper measure of damages and penalties owed to the members of
12 the CALIFORNIA LABOR SUB-CLASS; and,
- 13 (e) Whether DEFENDANT's conduct was willful.

14 43. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-
15 CLASS under California law by:

- 16 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the
17 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
18 CLASS all wages due for overtime worked, for which DEFENDANT is
19 liable pursuant to Cal. Lab. Code § 1194;
- 20 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
21 accurately pay PLAINTIFF and the members of the CALIFORNIA
22 LABOR SUB-CLASS the correct minimum wage pay for which
23 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 24 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and
25 the members of the CALIFORNIA LABOR SUB-CLASS with an
26 accurate itemized statement in writing showing the corresponding
27 correct amount of wages earned by the employee;
- 28

- 1 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
2 PLAINTIFF and the other members of the CALIFORNIA LABOR
3 SUB-CLASS with all legally required off-duty, uninterrupted thirty
4 (30) minute meal breaks and the legally required off-duty rest breaks;
- 5 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
6 when an employee is discharged or quits from employment, the
7 employer must pay the employee all wages due without abatement, by
8 failing to tender full payment and/or restitution of wages owed or in the
9 manner required by California law to the members of the
10 CALIFORNIA LABOR SUB-CLASS who have terminated their
11 employment; and,
- 12 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF
13 and the CALIFORNIA LABOR SUB-CLASS members with necessary
14 expenses incurred in the discharge of their job duties.

15 44. This Class Action meets the statutory prerequisites for the maintenance of a
16 Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 17 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS
18 are so numerous that the joinder of all CALIFORNIA LABOR SUB-
19 CLASS Members is impracticable and the disposition of their claims as
20 a class will benefit the parties and the Court;
- 21 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
22 issues that are raised in this Complaint are common to the
23 CALIFORNIA LABOR SUB-CLASS and will apply to every member
24 of the CALIFORNIA LABOR SUB-CLASS;
- 25 (c) The claims of the representative PLAINTIFF are typical of the claims
26 of each member of the CALIFORNIA LABOR SUB-CLASS.
27 PLAINTIFF, like all the other members of the CALIFORNIA LABOR
28 SUB-CLASS, was a non-exempt employee paid on an hourly basis who

1 was subjected to the DEFENDANT's practice and policy which failed
2 to pay the correct amount of wages due to the CALIFORNIA LABOR
3 SUB-CLASS. PLAINTIFF sustained economic injury as a result of
4 DEFENDANT's employment practices. PLAINTIFF and the members
5 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
6 identically harmed by the same unlawful, deceptive, and unfair
7 misconduct engaged in by DEFENDANT; and,

- 8 (d) The representative PLAINTIFF will fairly and adequately represent and
9 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and
10 has retained counsel who are competent and experienced in Class
11 Action litigation. There are no material conflicts between the claims of
12 the representative PLAINTIFF and the members of the CALIFORNIA
13 LABOR SUB-CLASS that would make class certification
14 inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS
15 will vigorously assert the claims of all CALIFORNIA LABOR SUB-
16 CLASS Members.

17 45. In addition to meeting the statutory prerequisites to a Class Action, this action
18 is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- 19 (a) Without class certification and determination of declaratory, injunctive,
20 statutory and other legal questions within the class format, prosecution
21 of separate actions by individual members of the CALIFORNIA
22 LABOR SUB-CLASS will create the risk of:

- 23 1) Inconsistent or varying adjudications with respect to individual
24 members of the CALIFORNIA LABOR SUB-CLASS which
25 would establish incompatible standards of conduct for the
26 parties opposing the CALIFORNIA LABOR SUB-CLASS; or,
27 2) Adjudication with respect to individual members of the
28 CALIFORNIA LABOR SUB-CLASS which would as a

practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.

(b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide relief with respect to the CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT fails to pay all wages due. Including the correct wages for all time worked by the members of the CALIFORNIA LABOR SUB-CLASS as required by law;

(c) Common questions of law and fact predominate as to the members of the CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations of California Law as listed above, and predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

- 1) The interests of the members of the CALIFORNIA LABOR SUB-CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
- 2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:

- 1 A. Inconsistent or varying adjudications with respect to
2 individual members of the CALIFORNIA LABOR SUB-
3 CLASS, which would establish incompatible standards of
4 conduct for the DEFENDANT; and/or,
5 B. Adjudications with respect to individual members of the
6 CALIFORNIA LABOR SUB-CLASS would as a
7 practical matter be dispositive of the interests of the other
8 members not parties to the adjudication or substantially
9 impair or impede their ability to protect their interests;
10 3) In the context of wage litigation because a substantial number of
11 individual CALIFORNIA LABOR SUB-CLASS Members will
12 avoid asserting their legal rights out of fear of retaliation by
13 DEFENDANT, which may adversely affect an individual's job
14 with DEFENDANT or with a subsequent employer, the Class
15 Action is the only means to assert their claims through a
16 representative; and,
17 4) A class action is superior to other available methods for the fair
18 and efficient adjudication of this litigation because class
19 treatment will obviate the need for unduly and unnecessary
20 duplicative litigation that is likely to result in the absence of
21 certification of this action pursuant to Cal. Code of Civ. Proc. §
22 382.

23 46. This Court should permit this action to be maintained as a Class Action
24 pursuant to Cal. Code of Civ. Proc. § 382 because:

- 25 (a) The questions of law and fact common to the CALIFORNIA LABOR
26 SUB-CLASS predominate over any question affecting only individual
27 CALIFORNIA LABOR SUB-CLASS Members;
28

- 1 (b) A Class Action is superior to any other available method for the fair
2 and efficient adjudication of the claims of the members of the
3 CALIFORNIA LABOR SUB-CLASS because in the context of
4 employment litigation a substantial number of individual
5 CALIFORNIA LABOR SUB-CLASS Members will avoid asserting
6 their rights individually out of fear of retaliation or adverse impact on
7 their employment;
- 8 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
9 numerous that it is impractical to bring all members of the
10 CALIFORNIA LABOR SUB-CLASS before the Court;
- 11 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS
12 Members, will not be able to obtain effective and economic legal
13 redress unless the action is maintained as a Class Action;
- 14 (e) There is a community of interest in obtaining appropriate legal and
15 equitable relief for the acts of unfair competition, statutory violations
16 and other improprieties, and in obtaining adequate compensation for
17 the damages and injuries which DEFENDANT's actions have inflicted
18 upon the CALIFORNIA LABOR SUB-CLASS;
- 19 (f) There is a community of interest in ensuring that the combined assets of
20 DEFENDANT are sufficient to adequately compensate the members of
21 the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 22 (g) DEFENDANT has acted or refused to act on grounds generally
23 applicable to the CALIFORNIA LABOR SUB-CLASS, thereby
24 making final class-wide relief appropriate with respect to the
25 CALIFORNIA LABOR SUB-CLASS as a whole;
- 26 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
27 ascertainable from the business records of DEFENDANT. The
28 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA

1 CLASS Members who worked for DEFENDANT in California at any
2 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

- 3 (i) Class treatment provides manageable judicial treatment calculated to
4 bring a efficient and rapid conclusion to all litigation of all wage and
5 hour related claims arising out of the conduct of DEFENDANT as to
6 the members of the CALIFORNIA LABOR SUB-CLASS.

7
8 **FIRST CAUSE OF ACTION**

9 **For Unlawful Business Practices**

10 **[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]**

11 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)**

12 47. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege
13 and incorporate by this reference, as though fully set forth herein, the prior paragraphs of
14 this Complaint.

15 48. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof.
16 Code § 17021.

17 49. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”)
18 defines unfair competition as any unlawful, unfair, or fraudulent business act or practice.
19 Section 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to
20 unfair competition as follows:

21 Any person who engages, has engaged, or proposes to engage in unfair
22 competition may be enjoined in any court of competent jurisdiction. The court
23 may make such orders or judgments, including the appointment of a receiver,
24 as may be necessary to prevent the use or employment by any person of any
25 practice which constitutes unfair competition, as defined in this chapter, or as
26 may be necessary to restore to any person in interest any money or property,
27 real or personal, which may have been acquired by means of such unfair
28 competition.

Cal. Bus. & Prof. Code § 17203.

50. By the conduct alleged herein, DEFENDANT has engaged and continues to
engage in a business practice which violates California law, including but not limited to, the

1 applicable Industrial Wage Order(s), the California Code of Regulations and the California
2 Labor Code including Sections 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1, 1198, 2802
3 and the Fair Labor Standards Act and federal regulations promulgated thereunder, for which
4 this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof.
5 Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
6 unfair competition, including restitution of wages wrongfully withheld.

7 51. By the conduct alleged herein, DEFENDANT's practices were unlawful and
8 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
9 unscrupulous or substantially injurious to employees, and were without valid justification or
10 utility for which this Court should issue equitable and injunctive relief pursuant to Section
11 17203 of the California Business & Professions Code, including restitution of wages
12 wrongfully withheld.

13 52. By the conduct alleged herein, DEFENDANT's practices were deceptive and
14 fraudulent in that DEFENDANT's policy and practice failed to provide the legally mandated
15 meal and rest periods, the required amount of compensation for missed meal and rest
16 periods and overtime and minimum wages owed, failed to timely pay wages, and failed to
17 reimburse all necessary business expenses incurred, and failed to provide Fair Labor
18 Standards Act overtime wages due for overtime worked as a result of failing to include non-
19 discretionary incentive compensation into their regular rates of pay for purposes of
20 computing the proper overtime pay due to a business practice that cannot be justified,
21 pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements
22 in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue
23 injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
24 restitution of wages wrongfully withheld.

25 53. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
26 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and
27 the other members of the CALIFORNIA CLASS to be underpaid during their employment
28 with DEFENDANT.

1 54. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
2 unfair and deceptive in that DEFENDANT's policies, practices and procedures failed to
3 provide all legally required meal breaks to PLAINTIFF and the other members of the
4 CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

5 55. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
6 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty
7 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of
8 pay for each workday in which a second off-duty meal period was not timely provided for
9 each ten (10) hours of work.

10 56. PLAINTIFF further demands on behalf of herself and each member of the
11 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off
12 duty paid rest period was not timely provided as required by law.

13 57. By and through the unlawful and unfair business practices described herein,
14 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and
15 the other members of the CALIFORNIA CLASS, including earned wages for all time
16 worked, and has deprived them of valuable rights and benefits guaranteed by law and
17 contract, all to the detriment of these employees and to the benefit of DEFENDANT so as to
18 allow DEFENDANT to unfairly compete against competitors who comply with the law.

19 58. All the acts described herein as violations of, among other things, the
20 Industrial Welfare Commission Wage Orders, the California Code of Regulations, and the
21 California Labor Code, were unlawful and in violation of public policy, were immoral,
22 unethical, oppressive and unscrupulous, were deceptive, and thereby constitute unlawful,
23 unfair and deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et*
24 *seq.*

25 59. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled
26 to, and do, seek such relief as may be necessary to restore to them the money and property
27 which DEFENDANT has acquired, or of which PLAINTIFF and the other members of the
28

1 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
2 unfair business practices, including earned but unpaid wages for all time worked.

3 60. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
4 entitled to, and do, seek a declaration that the described business practices are unlawful,
5 unfair and deceptive, and that injunctive relief should be issued restraining DEFENDANT
6 from engaging in any unlawful and unfair business practices in the future.

7 61. PLAINTIFF and the other members of the CALIFORNIA CLASS have no
8 plain, speedy and/or adequate remedy at law that will end the unlawful and unfair business
9 practices of DEFENDANT. Further, the practices herein alleged presently continue to occur
10 unabated. As a result of the unlawful and unfair business practices described herein,
11 PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will
12 continue to suffer irreparable legal and economic harm unless DEFENDANT is restrained
13 from continuing to engage in these unlawful and unfair business practices.

14
15 **SECOND CAUSE OF ACTION**

16 **For Failure To Pay Minimum Wages**

17 **[Cal. Lab. Code §§ 1194, 1197 and 1197.1]**

18 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**
19 **and Against All Defendants)**

20 62. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
21 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
22 paragraphs of this Complaint.

23 63. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
24 CLASS bring a claim for DEFENDANT's willful and intentional violations of the
25 California Labor Code and the Industrial Welfare Commission requirements for
26 DEFENDANT's failure to accurately calculate and pay minimum wages to PLAINTIFF and
27 CALIFORNIA CLASS Members.

1 64. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by
2 the commission is the minimum wage to be paid to employees, and the payment of a less
3 wage than the minimum so fixed is unlawful.

4 65. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid
5 wages, including minimum wage compensation and interest thereon, together with the costs
6 of suit.

7 66. DEFENDANT maintained a wage practice of paying PLAINTIFF and the
8 other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
9 amount of time they work. As set forth herein, DEFENDANT's policy and practice was to
10 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the
11 other members of the CALIFORNIA LABOR SUB-CLASS.

12 67. DEFENDANT's unlawful wage and hour practices manifested, without
13 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
14 implementing a policy and practice that denies accurate compensation to PLAINTIFF and
15 the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum
16 wage pay.

17 68. In committing these violations of the California Labor Code, DEFENDANT
18 inaccurately calculated the correct time worked and consequently underpaid the actual time
19 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
20 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and
21 other benefits in violation of the California Labor Code, the Industrial Welfare Commission
22 requirements and other applicable laws and regulations.

23 69. As a direct result of DEFENDANT's unlawful wage practices as alleged
24 herein, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did
25 not receive the correct minimum wage compensation for their time worked for
26 DEFENDANT.

27 70. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
28 required, permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS

1 Members to work without paying them for all the time they were under DEFENDANT's
2 control. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
3 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked
4 that they were entitled to, constituting a failure to pay all earned wages.

5 71. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
6 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
7 CLASS for the true time they worked, PLAINTIFF and the other members of the
8 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an
9 economic injury in amounts which are presently unknown to them and which will be
10 ascertained according to proof at trial.

11 72. DEFENDANT knew or should have known that PLAINTIFF and the other
12 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their
13 time worked. DEFENDANT elected, either through intentional malfeasance or gross
14 nonfeasance, to not pay employees for their labor as a matter of company policy, practice
15 and procedure, and DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF
16 and the other members of the CALIFORNIA LABOR SUB-CLASS the correct minimum
17 wages for their time worked.

18 73. In performing the acts and practices herein alleged in violation of California
19 labor laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-
20 CLASS for all time worked and provide them with the requisite compensation,
21 DEFENDANT acted and continues to act intentionally, oppressively, and maliciously
22 toward PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
23 with a conscious and utter disregard for their legal rights, or the consequences to them, and
24 with the despicable intent of depriving them of their property and legal rights, and otherwise
25 causing them injury in order to increase company profits at the expense of these employees.

26 74. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
27 CLASS therefore request recovery of all unpaid wages, according to proof, interest,
28 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT,

1 in a sum as provided by the California Labor Code and/or other applicable statutes. To the
2 extent minimum wage compensation is determined to be owed to the CALIFORNIA
3 LABOR SUB-CLASS Members who have terminated their employment, DEFENDANT's
4 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also
5 be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought
6 herein on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's
7 conduct as alleged herein was willful, intentional and not in good faith. Further,
8 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek
9 and recover statutory costs.

10
11 **THIRD CAUSE OF ACTION**

12 **For Failure To Pay Overtime Compensation**

13 **[Cal. Lab. Code § 510]**

14 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
15 **Defendants)**

16 75. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
17 CLASS, reallege and incorporate by this reference, as though full set forth herein, the prior
18 paragraphs of this Complaint.

19 76. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
20 CLASS bring a claim for DEFENDANT's willful and intentional violations of the
21 California Labor Code and the Industrial Welfare Commission requirements for
22 DEFENDANT's failure to pay these employees for all overtime worked, including, work
23 performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday,
24 and/or forty (40) hours in any workweek.

25 77. Cal. Lab. Code § 510 further provides that employees in California shall not
26 be employed more than eight (8) hours per workday and more than forty (40) hours per
27 workweek unless they receive additional compensation beyond their regular wages in
28 amounts specified by law.

1 78. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid
2 wages, including minimum wage and overtime compensation and interest thereon, together
3 with the costs of suit. Cal. Lab. Code § 1198 further states that the employment of an
4 employee for longer hours than those fixed by the Industrial Welfare Commission is
5 unlawful.

6 79. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
7 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
8 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,
9 including overtime work.

10 80. DEFENDANT's unlawful wage and hour practices manifested, without
11 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
12 implementing a policy and practice that failed to accurately record overtime worked by
13 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members and denied accurate
14 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
15 CLASS for overtime worked, including, the overtime work performed in excess of eight (8)
16 hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
17 workweek.

18 81. In committing these violations of the California Labor Code, DEFENDANT
19 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
20 PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT
21 acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in
22 violation of the California Labor Code, the Industrial Welfare Commission requirements
23 and other applicable laws and regulations. As a direct result of DEFENDANT's unlawful
24 wage practices as alleged herein, the PLAINTIFF and the other members of the
25 CALIFORNIA LABOR SUB-CLASS did not receive full compensation for overtime
26 worked.

27 82. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
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1 from the overtime requirements of the law. None of these exemptions are applicable to the
2 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
3 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were not
4 subject to a valid collective bargaining agreement that would preclude the causes of action
5 contained herein this Complaint. Rather, PLAINTIFF brings this Action on behalf of
6 herself and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations
7 of non-negotiable, non-waiveable rights provided by the State of California.

8 83. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
9 the other members of the CALIFORNIA LABOR SUB-CLASS have been paid less for
10 overtime worked that they are entitled to, constituting a failure to pay all earned wages.

11 84. DEFENDANT failed to accurately pay the PLAINTIFF and the other
12 members of the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they
13 worked which was in excess of the maximum hours permissible by law as required by Cal.
14 Lab. Code §§ 510, 1194 & 1198, even though PLAINTIFF and the other members of the
15 CALIFORNIA LABOR SUB-CLASS were required to work, and did in fact work, overtime
16 as to which DEFENDANT failed to accurately record and pay as evidenced by
17 DEFENDANT's business records and witnessed by employees.

18 85. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
19 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
20 CLASS for the true amount of time they worked, PLAINTIFF and the other members of the
21 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an
22 economic injury in amounts which are presently unknown to them and which will be
23 ascertained according to proof at trial.

24 86. DEFENDANT knew or should have known that PLAINTIFF and the other
25 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for all
26 overtime worked. DEFENDANT elected, either through intentional malfeasance or gross
27 nonfeasance, to not pay employees for their labor as a matter of company policy, practice
28

1 and procedure, and DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF
2 and the other members of the CALIFORNIA LABOR SUB-CLASS for overtime worked.

3 87. In performing the acts and practices herein alleged in violation of California
4 labor laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-
5 CLASS for all overtime worked and provide them with the requisite overtime compensation,
6 DEFENDANT acted and continues to act intentionally, oppressively, and maliciously
7 toward PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
8 with a conscious of and utter disregard for their legal rights, or the consequences to them,
9 and with the despicable intent of depriving them of their property and legal rights, and
10 otherwise causing them injury in order to increase company profits at the expense of these
11 employees.

12 88. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
13 CLASS therefore request recovery of all overtime wages, according to proof, interest,
14 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT,
15 in a sum as provided by the California Labor Code and/or other applicable statutes. To the
16 extent minimum and/or overtime compensation is determined to be owed to the
17 CALIFORNIA LABOR SUB-CLASS Members who have terminated their employment,
18 DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and therefore these
19 individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which
20 penalties are sought herein on behalf of these CALIFORNIA LABOR SUB-CLASS
21 Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in
22 good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
23 are entitled to seek and recover statutory costs.

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1 **FOURTH CAUSE OF ACTION**

2 **For Failure to Provide Required Meal Periods**

3 **[Cal. Lab. Code §§ 226.7 & 512]**

4 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
5 **Defendants)**

6 89. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
7 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
8 paragraphs of this Complaint.

9 90. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time
10 failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other
11 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order
12 and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA
13 LABOR SUB-CLASS MEMBERS did not prevent these employees from being relieved of
14 all of their duties for the legally required off-duty meal periods. As a result of their rigorous
15 work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
16 were from time to time not fully relieved of duty by DEFENDANT for their meal periods.
17 Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA
18 LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th)
19 hour of work is evidenced by DEFENDANT's business records from time to time. Further,
20 DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a
21 second off-duty meal period in some workdays in which these employees were required by
22 DEFENDANT to work ten (10) hours of work from time to time. As a result, PLAINTIFF
23 and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal
24 breaks without additional compensation and in accordance with DEFENDANT's strict
25 corporate policy and practice.

26 91. DEFENDANT further violates California Labor Code §§ 226.7 and the
27 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA
28 LABOR SUB-CLASS Members who were not provided a meal period, in accordance with

1 the applicable Wage Order, one additional hour of compensation at each employee's regular
2 rate of pay for each workday that a meal period was not provided.

3 92. As a proximate result of the aforementioned violations, PLAINTIFF and
4 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
5 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
6 suit.

7
8 **FIFTH CAUSE OF ACTION**

9 **For Failure to Provide Required Rest Periods**

10 **[Cal. Lab. Code §§ 226.7 & 512]**

11 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
12 **Defendants)**

13 93. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
14 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
15 paragraphs of this Complaint.

16 94. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were
17 from time to time required to work in excess of four (4) hours without being provided ten
18 (10) minute rest periods. Further, these employees from time to time were denied their first
19 rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
20 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of
21 between six (6) and eight (8) hours, and a first, second and third rest period of at least ten
22 (10) minutes for some shifts worked of ten (10) hours or more from time to time.

23 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not
24 provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
25 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were periodically
26 denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

27 95. DEFENDANT further violated California Labor Code §§ 226.7 and the
28 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA

LABOR SUB-CLASS Members who were not provided a rest period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that rest period was not provided.

96. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

SIXTH CAUSE OF ACTION

For Failure to Provide Accurate Itemized Statements

[Cal. Lab. Code § 226]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

97. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

98. Cal. Labor Code § 226 provides that an employer must furnish employees with an "accurate itemized" statement in writing showing:

- (1) gross wages earned,
- (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- (3) the number of piecerate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- (5) net wages earned,
- (6) the inclusive dates of the period for which the employee is paid,
- (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
- (8) the name and address of the legal entity that is the employer, and
- (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

1 99. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
2 other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate
3 wage statements which failed to show, among other things, the correct gross and net wages
4 earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
5 employees with an accurate itemized wage statement in writing showing, among other
6 things, gross wages earned and all applicable hourly rates in effect during the pay period and
7 the corresponding amount of time worked at each hourly rate. PLAINTIFF and
8 CALIFORNIA LABOR SUB-CLASS Members were paid on an hourly basis. As such, the
9 wage statements should reflect all applicable hourly rates during the pay period and the total
10 hours worked, and the applicable pay period in which the wages were earned pursuant to
11 California Labor Code Section 226(a). The wage statements DEFENDANT provided to
12 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members failed to identify
13 such information. More specifically, the wage statements failed to identify the accurate total
14 hours worked each pay period. When the hours shown on the wage statements were added
15 up, they did not equal the actual total hours worked during the pay period in violation of Cal.
16 Lab. Code 226(a)(2). Aside, from the violations listed above in this paragraph,
17 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the
18 requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time
19 to time provided PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
20 CLASS with wage statements which violated Cal. Lab. Code § 226.

21 100. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab.
22 Code § 226, causing injury and damages to PLAINTIFF and the other members of the
23 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
24 expended calculating the correct wages for all missed meal and rest breaks and the amount
25 of employment taxes which were not properly paid to state and federal tax authorities.
26 These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of
27 the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty
28 dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred

1 dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code §
2 226, in an amount according to proof at the time of trial (but in no event more than four
3 thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the
4 CALIFORNIA LABOR SUB-CLASS herein).

5
6 **SEVENTH CAUSE OF ACTION**

7 **For Failure to Reimburse Employees for Required Expenses**

8 **[Cal. Lab. Code § 2802]**

9 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
10 **Defendants)**

11 101. PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS members
12 reallege and incorporate by this reference, as though fully set forth herein, the prior
13 paragraphs of this Complaint.

14 102. Cal. Lab. Code § 2802 provides, in relevant part, that:

15 An employer shall indemnify his or her employee for all necessary
16 expenditures or losses incurred by the employee in direct consequence of the
17 discharge of his or her duties, or of his or her obedience to the directions of
the employer, even though unlawful, unless the employee, at the time of
obeying the directions, believed them to be unlawful.

18 103. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802,
19 by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
20 CLASS members for required expenses incurred in the discharge of their job duties for
21 DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFF and the
22 CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not
23 limited to, costs related to using their personal cellular phones on behalf of and for the
24 benefit of DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA LABOR
25 SUB-CLASS Members were required by DEFENDANT to use their personal cellular
26 phones and home offices in order to perform work related job tasks. DEFENDANT's policy
27 and practice was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
28

1 CLASS members for expenses resulting from using their personal cellular phones and home
2 offices for DEFENDANT within the course and scope of their employment for
3 DEFENDANT. These expenses were necessary to complete their principal job duties.
4 DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this
5 expectation. Although these expenses were necessary expenses incurred by PLAINTIFF
6 and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify
7 and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for
8 these expenses as an employer is required to do under the laws and regulations of California.

9 104. PLAINTIFF therefore demands reimbursement for expenditures or losses
10 incurred by herself and the CALIFORNIA LABOR SUB-CLASS members in the discharge
11 of their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT,
12 with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

13 **EIGHTH CAUSE OF ACTION**

14 **For Failure to Pay Sick Pay Wages**

15 **[Cal. Lab. Code §§ 201-203, 233, 246]**

16 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**

17 **and Against All Defendants)**

18 105. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
19 CLASS, reallege and incorporate by reference, as though fully set forth herein, the prior
20 paragraphs of this Complaint.

21 106. Cal Lab. Code § 233 provides that an employer must permit an employee to
22 use accrued sick leave in accordance with Cal Lab. Code § 246.5 at the employee's then
23 current rate of entitlement. Cal Lab. Code § 246 provides that an employee is entitled to
24 sick pay wages for use of accrued sick leave pursuant to Cal Lab. Code § 246.5.
25 Specifically, once accrued sick leave is used as paid sick time, an employee has a vested
26 right to sick pay wages, which an employer must calculate and compensate based on one of
27 two calculations: (i) "Paid sick time for nonexempt employees shall be calculated in the
28 same manner as the regular rate of pay for the workweek in which the employee uses paid

1 sick time, whether or not the employee actually works overtime in that workweek,” or (ii)
2 “Paid sick time for nonexempt employees shall be calculated by dividing the employee’s
3 total wages, not including overtime premium pay, by the employee’s total hours worked in
4 the full pay periods of the prior 90 days of employment.” Under Cal Lab. Code §§ 218 and
5 233, employees may sue to recover underpaid sick pay wages as damages.

6 107. As a matter of policy and practice, DEFENDANT pays sick pay wages to
7 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS at the
8 incorrect rate of pay. PLAINTIFF and the other members of the CALIFORNIA LABOR-
9 SUB-CLASS regularly use accrued sick leave in the workweeks in which they also earn
10 non-hourly remuneration. As a matter of policy and practice, DEFENDANT pays sick pay
11 wages to PLAINTIFF and the other members of the CALIFORNIA LABOR-SUB-CLASS
12 at the base hourly pay, as opposed to the regular rate of pay, which would consider all non-
13 hourly remuneration in addition to base hourly wages, or the rate resulting from dividing the
14 employee’s total wages, not including overtime premium pay, by the employee’s total hours
15 worked in the full pay periods of the prior 90 days of employment. As a result,
16 DEFENDANT underpaid sick pay wages to PLAINTIFF and the other members of the
17 CALIFORNIA LABOR-SUB-CLASS.

18 108. Cal. Lab. Code § 246 specifically requires that, upon use of accrued sick
19 leave, vested sick pay wages are due and to be paid no later than the payday for the next
20 regular payroll period after accrued sick leave is used as paid sick time. Similarly, Cal. Lab.
21 Code § 201 provides that if an employer discharges an employee, wages earned and unpaid
22 at the time of discharge are due and payable immediately. Cal. Lab. Code § 202 provides
23 that an employee is entitled to receive all unpaid wages no later than 72 hours after an
24 employee quits his or her employment, unless the employee has given 72-hour notice of his
25 or her intention to quit, in which case the employee is entitled to his or her wages at the time
26 of quitting. The Labor Code penalizes untimely payments. For example, Cal. Lab. Code §
27 203 provides that if an employer willfully fails to pay wages owed in accordance with Cal.
28 Lab. Code §§ 201-202, then the wages of the employee shall continue as a penalty from the

1 due date, and at the same rate until paid, but the wages shall not continue for more than
2 thirty (30) days. Under Cal. Lab. Code §§ 203 and 218, employees may sue to recover
3 applicable penalties.

4 109. As alleged herein and as a matter of policy and practice, DEFENDANT
5 routinely underpays sick pay wages and thus did not timely pay PLAINTIFF and the other
6 members of the CALIFORNIA LABOR-SUB-CLASS all owing and underpaid sick pay
7 wages. As a result, DEFENDANT violates Cal. Lab. Code §§ 201-203, 233, and 246,
8 among other Labor Code provisions. PLAINTIFF is informed and believes that
9 DEFENDANT was advised by skilled lawyers and knew, or should have known, of the
10 mandates of the Labor Code as it relates to PLAINTIFF's allegations, especially since the
11 California Supreme Court has explained that "[c]ourts have recognized that 'wages' also
12 include those benefits to which an employee is entitled as a part of his or her compensation,
13 including money, room, board, clothing, vacation pay, and sick pay." *Murphy v. Kenneth*
14 *Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103 (2007)(emphasis added). Because DEFENDANT
15 willfully fails to timely pay PLAINTIFF and the other members of the CALIFORNIA
16 LABOR-SUB-CLASS all sick pay wages due, DEFENDANT is subject to applicable
17 penalties.

18 110. Such a pattern, practice, and uniform administration of corporate policy is
19 unlawful and entitles PLAINTIFF and the other members of the CALIFORNIA LABOR-
20 SUB-CLASS to underpaid sick pay wages, including interest thereon, applicable penalties,
21 attorney's fees, and costs of suit.

22 23 **NINTH CAUSE OF ACTION**

24 **For Failure to Provide Reasonable Accommodation**

25 **[Cal. Gov. Code § 12940(m)]**

26 **(By PLAINTIFF and Against All Defendants)**

27 111. PLAINTIFF realleges and incorporates by reference, as though fully set forth
28 herein, the prior paragraphs of this Complaint.

1 112. DEFENDANT was an employer who met all of the requirements set forth under
2 the California Fair Employment and Housing Act.

3 113. [REDACTED]
4 [REDACTED]

5 114. [REDACTED]
6 [REDACTED]

7 115. [REDACTED]
8 [REDACTED]

9 116. [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED] PLAINTIFF's

13 managers failed to accommodate her requests and brushed off PLAINTIFF's complaints.

14 [REDACTED]
15 [REDACTED] PLAINTIFF continues to be employed

16 with DEFENDANT [REDACTED] at the time of filing this Complaint. Prior to filing
17 this action PLAINTIFF exhausted her administrative remedies by filing a timely administrative
18 complaint with the Department of Fair Employment and Housing ("DFEH") and received a
19 DFEH Right to Sue letter on April 4, 2024.

20 117. DEFENDANT discriminated against and failed to reasonably accommodate
21 PLAINTIFF [REDACTED] PLAINTIFF herein alleges that the actions taken by
22 employees of DEFENDANT against PLAINTIFF occurred within the normal scope and course
23 of these individuals' employment with DEFENDANT. PLAINTIFF further alleges that these
24 employees were PLAINTIFF's supervisors while PLAINTIFF was employed by
25 DEFENDANT. However, PLAINTIFF's request for accommodation fell on deaf ears, as
26 DEFENDANT failed to respond to and accommodate PLAINTIFF's requests. PLAINTIFF
27 requested [REDACTED] accommodation and raised complaints while she worked for DEFENDANT
28

1 and DEFENDANT retaliated against PLAINTIFF by taking adverse employment actions,
2 including denial of employment opportunities and privileges.

3 118. DEFENDANT failed to provide PLAINTIFF with reasonable accommodation for
4 [REDACTED].

5 119. As a direct and proximate result of DEFENDANT refusing to provide
6 PLAINTIFF with reasonable accommodation, PLAINTIFF was met with a series of adverse
7 employment actions as set forth herein. As a further direct result of DEFENDANT's failure to
8 provide PLAINTIFF with a reasonable accommodation, PLAINTIFF was harmed in the form
9 of emotional and physical pain and suffering.

10 120. DEFENDANT's failure to provide reasonable accommodation was a substantial
11 factor in causing PLAINTIFF's harm.

12 121. The actions alleged herein were taken by managing agents and/or officers of
13 DEFENDANT and/or ratified by managing agents and/or officers of DEFENDANT. In so
14 doing, said managing agents and/or officers of DEFENDANT acted with malice and oppression
15 as those terms are used in California Code of Civil Procedure § 3294. As such, Plaintiff Santi
16 is entitled to an award of punitive damages.

17 122. PLAINTIFF is also entitled to recover reasonable attorney's fees and costs
18 pursuant to Cal. Gov. Code § 12965(b).

19
20 **PRAYER FOR RELIEF**

21 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
22 severally, as follows:

23 1. On behalf of the CALIFORNIA CLASS:

- 24 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
25 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
26 B) An order temporarily, preliminarily and permanently enjoining and restraining
27 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
28

- 1 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully
2 withheld from compensation due to PLAINTIFF and the other members of the
3 CALIFORNIA CLASS; and,
4 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
5 for restitution of the sums incidental to DEFENDANT's violations due to
6 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

7 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

- 8 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth
9 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
10 action pursuant to Cal. Code of Civ. Proc. § 382;
11 B) Compensatory damages, according to proof at trial, including compensatory
12 damages for minimum and overtime compensation due PLAINTIFF and the other
13 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
14 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
15 statutory rate;
16 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
17 in which a violation occurs and one hundred dollars (\$100) per each member of
18 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
19 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
20 an award of costs for violation of Cal. Lab. Code § 226;
21 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
22 the applicable IWC Wage Order;
23 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
24 1197;
25 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
26 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
27 costs of suit.; and,
28

1 G) The wages of all terminated employees in the CALIFORNIA LABOR
2 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
3 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

4 3. On behalf of PLAINTIFF for the Ninth cause of action:

- 5 A) Compensatory damages, according to proof at trial, but in excess of \$25,000.
6 B) Special and General damages according to proof;
7 C) Statutory damages, penalties and attorney's fees;
8 D) For punitive damages in an amount necessary to make an example of and to
9 punish DEFENDANT and deter DEFENDANT from engaging in future similar
10 conduct;
11 E) For loss of earnings (both past and future); and,
12 F) For interest at the legal rate in an amount according to proof.

13 4. On all claims:

- 14 A) An award of interest, including prejudgment interest at the legal rate;
15 B) Such other and further relief as the Court deems just and equitable; and,
16 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
17 law, including, but not limited to, pursuant to Labor Code §221, §226, §1194,
18 and/or §2802.

19 Dated: April 18, 2024

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

21 By: /s/ Nicholas De Blouw

22 Norman B. Blumenthal
23 Nicholas J. De Blouw

24 *Attorneys for Plaintiff*

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DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

Dated: April 18, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Nicholas De Blouw
Norman B. Blumenthal
Nicholas J. De Blouw

Attorneys for Plaintiff